

**ADMINISTRATOR OF SECURITIES
STATE OF MAINE**

In the matter of)
MERRILL LYNCH, PIERCE, FENNER) Case No. 10-021
& SMITH INCORPORATED,)
Respondent.) **ADMINISTRATIVE CONSENT ORDER**

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a broker-dealer licensed¹ in the state of Maine, with a Central Registration Depository ("CRD") number of 7691; and

State securities regulators from multiple jurisdictions have conducted coordinated investigations into the registration of Merrill Lynch Client Associates ("CAs") and Merrill Lynch's supervisory system with respect to the registrations of CAs; and

Merrill Lynch has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant to the terms specified in this Consent Order (the "Order"); and

Merrill Lynch agrees to make certain changes in its supervisory system with respect to the registration of CAs, and to make certain payments in accordance with the terms of this Order; and

Merrill Lynch elects to waive permanently any right to a hearing under 32 M.R.S.A. § 16604 and to judicial review under 32 M.R.S.A. § 16609 with respect to this Order; and

Solely for the purpose of terminating the multi-state investigations, and in settlement of the issues contained in this Order, Merrill Lynch, without admitting or denying the findings of fact or conclusions of law contained in this Order, consents to the entry of this Order.

¹ With respect to securities professionals and the entities with which they are associated, the Maine Uniform Securities Act uses the term "licensing" in the same manner other jurisdictions may use the term "registration". For the purposes of this Order the two terms are synonymous.

1 NOW, THEREFORE, the Securities Administrator for the Sate of Maine, as administrator
2 of the Maine Uniform Securities Act, hereby enters this Order:

3 **I.**

4 **FINDINGS OF FACTS**

5 1. Merrill Lynch admits the jurisdiction of the Administrator of Securities for the State of
6 Maine in this matter.

7 Background on Client Associates

8 2. The CAs function as sales assistants and typically provide administrative and sales
9 support to one or more of Merrill Lynch's Financial Advisors ("FAs"). There are different titles
10 within the CA position, including Registered Client Associate and Registered Senior Client
11 Associate.

12 3. The responsibilities of a CA specifically include:

- 13 a. Handling client requests;
- 14 b. Resolving client inquiries and complaints;
- 15 c. Determining if client issues require escalation to the FA or the branch management
16 team; and
- 17 d. Processing of operational documents such as letters of authorization and client
18 check requests.

19 4. In addition to the responsibilities described above, and of particular significance to this
20 Order, some CAs are permitted to accept unsolicited orders from clients. As discussed below,
21 Merrill Lynch's written policies and procedures require that any CAs accepting client orders first
22 obtain the necessary licenses and registrations.

23 5. Notably, FAs might have a "primary CA" and a "secondary CA". As suggested by the
24 designation, the customary practice is that the primary CA would handle the FA's administrative
25 matters and client orders. However, if the primary CA was unavailable, the secondary CA would
26 handle the FA's administrative matters and client orders.

1 6. During the period from 2002 to the present, Merrill Lynch employed approximately
2 6,200 CAs (average) per year.

3
4
5 Registration Required

6 7. CAs accepting orders from Maine residents or otherwise engaging in the sale of
7 securities in the State of Maine are required to be registered and/or licensed pursuant to 32
8 M.R.S.A § 16402.

9 8. Pursuant to the general prohibition under 32 M.R.S.A. § 16402(1), a person cannot
10 accept unsolicited orders in Maine without being licensed.

11 9. Pursuant to 32 M.R.S.A. § 16402(4), a broker-dealer may not employ an agent unless
12 the agent is licensed. Pursuant to 32 M.R.S.A. § 16604(4), a broker-dealer may be fined for selling
13 securities in Maine through agents other than licensed agents. For example, a broker dealer may be
14 fined \$5,000 per violation for selling securities in Maine through agents other than licensed agents.

15 Merrill Lynch Requires Registration of Client Associates

16 10. In order for a CA to accept client orders, Merrill Lynch generally required each CA to
17 pass the series 7 and 63 qualification exams and to license in the appropriate jurisdictions.

18 11. At all times relevant to this Order, Merrill Lynch's policies and procedures specified
19 that each CA maintain registrations in the same jurisdictions as his or her FA, or broadly required
20 that each CA maintain registrations in all necessary jurisdictions.

21 Regulatory Investigations and Findings

22 12. In May 2008, state regulators received a tip alleging that Merrill Lynch was failing to
23 ensure its CAs complied with jurisdictional registration requirements and its own procedures. The
24 tip alleged that Merrill Lynch CAs were licensed in two jurisdictions – the CA's home state and
25 one neighboring state – because Merrill Lynch only paid for licenses in two jurisdictions.
26

1 13. After reviewing the allegations received by other states, the Administrator of Securities
2 for the State of Maine opened an investigation into Merrill Lynch's practices in connection with
3 CA licenses.

4 14. During the summer of 2008, Merrill Lynch received inquiries regarding CA licenses
5 from a number of state securities regulators.

6 15. Because Merrill Lynch's relevant trade records were maintained in hard copy and only
7 at branch offices across the country, the multi-state investigation focused on systemic issues with
8 Merrill Lynch CA registrations and related supervisory structure instead of attempting to identify
9 each incidence of unlicensed activity. Specifically:

- 10 a. After accepting a client order, CAs accessed the electronic trading system to enter
11 the order;
- 12 b. The CAs did not have to identify themselves during the order entry process.
13 Therefore, there is no electronic record that identifies which orders were accepted
14 by CAs;
- 15 c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the
16 person who accepted and/or entered each order. However, this report was not
17 maintained electronically, and was only maintained at the branch office where the
18 order was entered. Merrill Lynch represented that this daily report was the only
19 record that could identify who accepted a client order.
- 20 d. Merrill Lynch's trading system checked the registration of the FA, but did not check
21 the registration status of the person accepting the order to ensure that the person was
22 licensed in the appropriate jurisdiction.

23 16. The multi-state investigation found that many CAs supported FAs licensed in Maine
24 when the CAs were not licensed in Maine as agents of Merrill Lynch. This difference in licensing
25 status increased the possibility that CAs would engage in unlicensed activity.

26 17. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale
of securities in Maine at times when the CAs were not appropriately licensed in Maine.

1 Merrill Lynch's Remedial Measures and Cooperation

2 18. As a result of the inquiries by state regulators, Merrill Lynch conducted a review of its
3 CA registration practices.

4 19. Merrill Lynch's review found that as of June 30, 2008, the firm had 3,780 licensed
5 CAs. Approximately 2,200, almost 60%, of those licensed CAs were only licensed in their home
6 state or their home state and one additional state.

7 20. Consistent with the fact that many Merrill Lynch CAs were only registered in one or
8 two jurisdictions, Merrill Lynch's review found incidences of trading by CAs not properly state
9 licensed.

10 21. In October 2008, Merrill Lynch amended its registration policy to require that each CA
11 mirror the state registrations for the FAs that they support.² Merrill Lynch's Registration
12 Compliance personnel participated in calls with branch management to advise the field about this
13 requirement.

14 22. As Merrill Lynch worked on a more permanent solution, it also developed a temporary
15 report intended to identify instances where a CA's registration did not match the FA or FAs the CA
16 supported.

17 23. Between October 1, 2008 and January 28, 2009, 325 CAs were licensed with the Maine
18 Office of Securities as agents of Merrill Lynch. Yet, data as of February 28, 2009 indicated that
19 significant gaps remained between the licenses and registrations of CAs and their FAs.

20 24. However, Merrill Lynch, as a compliance enhancement, also developed an electronic
21 system that will prevent a person from entering client orders from a state in which the person
22 accepting the order is not licensed. Merrill Lynch began implementing this new system in June
23 2009 and fully completed implementation by December 31, 2009.³

24 ² It should be noted that Merrill Lynch's policy required CA/FA licensing/registration mirroring prior to 2006.
25 In 2006, it amended the relevant policies and procedures to more broadly require that CAs maintain appropriate
26 licenses and registrations.

³ Note that in late October, 2009, Banc of America Investment Services, Inc. ("BAIS") migrated the Central
Registration Depository to Merrill Lynch, however, the trading and order entry integration will not be completed until
the third quarter of 2010. BAIS, whose policies have required sales assistants' state registration status to mirror the
FAs they serve, will continue its own order entry system for their existing clients until integration is complete.

25. Merrill Lynch provided timely responses and substantial cooperation in connection with the regulatory investigations into this issue. Furthermore, as displayed by the corrective actions described above, Merrill Lynch has acknowledged the problems associated with its CA registrations and supervisory system.

II.

CONCLUSIONS OF LAW

1. The Administrator of Securities for the State of Maine has jurisdiction over this matter pursuant to 32 M.R.S.A. §§ 16101-16702.

2. Merrill Lynch's failure to establish an adequate system to monitor the licensing status of persons accepting client orders constitutes a violation of its obligation to establish a reasonably designed supervisory system and/or to establish, maintain and enforce reasonably designed procedures as required by 32 M.R.S.A. § 16412(4)(I).

3. Merrill Lynch's failure to require its CAs to be licensed in the appropriate jurisdictions is a failure to enforce its established written procedures, which, in turn, constitutes a violation of 32 M.R.S.A. § 16402, subjecting Merrill Lynch to the issuance of this order pursuant to 32 M.R.S.A. § 16412.

4. Merrill Lynch's sales of securities in Maine through unlicensed CAs violates 32 M.R.S.A. 16402(4).

5. Merrill Lynch's sales of securities in Maine through agents and sales representatives not licensed in Maine constitute a basis to order Merrill Lynch to cease and desist engaging in the sale of securities in Maine through unlicensed agents pursuant to 32 M.R.S.A. § 16604(1).

6. Pursuant to 32 M.R.S.A. § 16604(4), the violations described above constitute bases for the assessment of a civil fine against Merrill Lynch.

7. The Administrator of Securities for the State of Maine finds the following relief appropriate and in the public interest.

III.

UNDERTAKINGS

1. Merrill Lynch hereby undertakes and agrees to immediately establish and maintain a trade monitoring system that prevents any person from entering client orders that originate from jurisdictions where the person accepting the order is not appropriately licensed.

2. Merrill Lynch further undertakes and agrees to file with the Maine Office of Securities, within sixty days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to monitor the identity and registration/licensing status of each person who accepts a client order entered on Merrill Lynch's trading system.

3. For the period from the date of this Order through December 31, 2010, Merrill Lynch further undertakes and agrees to notify the Maine Office of Securities if it finds that any person associated with Merrill Lynch accepted a client order in Maine without being licensed, or exempt from registration/licensing, with the Maine Office of Securities as an agent of Merrill Lynch.

IV.

ORDER

On the basis of the Findings of Facts, Conclusions of Law, and Merrill Lynch's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Administrator of Securities for the State of Maine and any other action that the Administrator of Securities could commence against Merrill Lynch under applicable Maine law on behalf of Maine as it relates to unlicensed activity in Maine by Merrill Lynch's CAs and Merrill Lynch's supervision of CA licenses during the period from January

1, 2004 through the date of this Order.

2. This Order is entered into solely for the purpose of resolving the referenced multi-state investigation, and is not intended to be used for any other purpose. This Order does not limit or create any private rights or remedies against Merrill Lynch for any entity or person not a party to this Order. For instance, this Order does not limit liability or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch, to any claims involving third-parties.

3. Merrill Lynch is hereby reprimanded.

4. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of securities in the State of Maine through persons not licensed with the State of Maine as agents of Merrill Lynch.

5. Within ten days of the date of this Order, Merrill Lynch is hereby ordered to pay the sum of four hundred four thousand eight hundred dollars and no cents (\$404,800.00), by check made payable to the Treasurer, State of Maine and remitted to the Maine Office of Securities. The monies received by the Maine Office of Securities pursuant to this paragraph may be used, in accordance with Maine law, to reimburse the State of Maine Office of Securities for costs incurred during the investigation of this matter, for securities and investor education, for other securities and investor purposes, and/or for any other purpose permitted by law at the sole discretion of the Securities Administrator.

6. Merrill Lynch shall pay up to a total of twenty six million, five hundred sixty three thousand, ninety four dollars and fifty cents (\$26,563,094.50) in fines, penalties and any other monetary sanctions among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands pursuant to the calculations discussed with the multi-state working group.

7. However, if any state securities regulator determines not to accept Merrill Lynch's settlement offer, the total amount of the payment to the State of Maine shall not be affected, and shall remain at four hundred four thousand eight hundred dollars and no cents (\$404,800.00).

8. Merrill Lynch is hereby ordered to comply with the Undertakings contained herein.

9. This order is not intended by the Administrator of Securities for the State of Maine

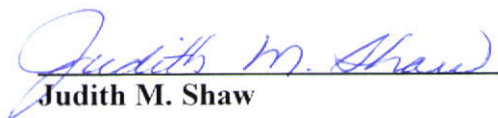
1 to subject any Covered Person to any disqualifications under the laws of the United States, any
2 state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands including, without
3 limitation, any disqualification from relying upon the state or federal registration exemptions or
4 safe harbor provisions. "Covered Person," means Merrill Lynch or any of its affiliates and their
5 current or former officers or former officers, directors, employees, or other persons that would
6 otherwise be disqualified as a result of the Orders (as defined below).

7 10. This Order and the order of any other State in related proceedings against Merrill
8 Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that
9 they otherwise are qualified, licensed or permitted to perform under applicable securities laws of
10 the State of Maine and any disqualifications from relying upon this state's registration exemptions
11 or safe harbor provisions that arise from the Orders are hereby waived.

12 11. This Order shall be binding upon Merrill Lynch and its successors and assigns as
13 well as to successors and assigns of relevant affiliates with respect to all conduct subject to the
14 provisions above and all future obligations, responsibilities, undertakings, commitments,
15 limitations, restrictions, events, and conditions.

16 Dated this 5th day of March, 2010

17
18 **BY ORDER OF:**

19 
20 **Judith M. Shaw**
21 **Administrator of Securities, State of Maine**

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH

Merrill Lynch hereby acknowledges that it has been served with a copy of this Consent Order ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Merrill Lynch admits the jurisdiction of the Administrator of Securities for the State of Maine, neither admits nor denies the Findings of Facts and Conclusions of Law contained in this Order, and consents to entry of this Order by the Administrator of Securities for the State of Maine as settlement of the issues contained in this Order.

Merrill Lynch agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that Merrill Lynch shall pay pursuant to this Order.

Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Joaquin M. Sena represents that he is an Associate General Counsel and, as such, has been authorized to enter into this Order for and on behalf of Merrill Lynch.

Dated this 22nd day of February, 2010.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: Joaquin M. Sena
Joaquin M. Sena
Title: Associate General Counsel

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

I certify that Joaquin M. Sena personally known to me, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 22nd day of February, 2010.

(Official Seal)

Marianne Bretton-Granatoor
Notary Public
My Commission Expires: 2010

MARIANNE BRETTON-GRANATOOR
NOTARY PUBLIC STATE OF NEW YORK
NO. 02BR4932444
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES MAY 02 2010